

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MAR D. MALUOTH,

Defendant.

8:22-CR-255

**ORDER ON MOTION TO CONTINUE
SENTENCING HEARING**

On October 17, 2023, one day before the Defendant's sentencing hearing was scheduled to take place, the Government advised the Court's staff via e-mail that after reading through the trial transcript in this case, it believed the Defendant should receive a four-level enhancement pursuant to USSG § 2K2.1(b)(4)(B). The Government also expressed that it did not believe the information giving rise to this enhancement was in any of the discovery materials and was omitted from the Presentence Investigation Report. The Government concluded its e-mail to Court staff by stating that it was "happy to file a motion to continue the sentencing so the parties, probation, and the Court can address the issue." Counsel for the Defendant responded via e-mail moments later and said that he "would respectfully object to any continuance and an untimely objection to the PSR." In light of this communication, the Court directed its staff to respond via e-mail and state that it would consider whether to continue the sentencing hearing after receiving a motion for a continuance. The Government filed such a motion shortly thereafter. [Filing 83](#). The Defendant then filed a written objection to the Motion requesting that the sentencing hearing proceed as scheduled. [Filing 84](#).

The Court finds that it is in the interests of justice to continue the Defendant's sentencing hearing so that it can consider this matter further and allow the Probation Office a chance to weigh

in as well. However, the Court notes that just because it has granted the continuance does not necessarily mean that it will ultimately apply the four-level enhancement the Government seeks. The Court's Order on Sentencing Schedule was filed on July 20, 2023. [Filing 72 at 1](#). Pursuant to this Order, objections by counsel to the initial presentence report were due on September 11, 2023. [Filing 72 at 1](#). The Order further prescribed that any motions or objections regarding unresolved objections to the Presentence Report were due on September 28, 2023. Thus far, the Government has filed neither an objection to the Presentence Report, nor any motion relating to sentencing.

The Court therefore directs that to the extent the Government asks this Court to apply a four-level enhancement pursuant to USSG § 2K2.1(b)(4)(B), it shall file an appropriate motion explaining why, in its view, there is good cause to consider this untimely request. The motion should also address the substantive legal provisions that justify application of this enhancement. The Government's Motion shall be due seven (7) days from the date of this Order. The Defendant shall then have seven (7) days to submit any response he deems appropriate. The Court will set forth a new date for the sentencing hearing in due course. Accordingly,

IT IS ORDERED:

1. The Government's Motion to Continue the Sentencing Hearing, [Filing 83](#) is granted;
2. The Defendant's Objection to the Government's Motion to Continue, [Filing 84](#), is denied, but the Court reserves ruling on whether it will consider the Government's argument in favor of a four-level enhancement pursuant to USSG § 2K2.1(b)(4)(B);
3. Within seven (7) days from the date of this Order, the Government shall file a Motion that complies with the requirements set forth in this Order; and
4. Within seven (7) days from the date the Government files any such Motion, the Defendant may file an appropriate response.

Dated this 17th day of October, 2023.

BY THE COURT:



Brian C. Buescher
United States District Judge